

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER FLOHR, EPHRAIM GUTMARK
and CHRISTIAN OLIVER PASCHEREIT

Application No. 10/623,812

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was received electronically at the Board of Patent Appeals and Interferences on December 20, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below:

On December 15, 2005, appellants filed an Appeal Brief under 37 CFR § 41.37. A review of the file reveals that the “Summary of Claimed Subject Matter,” as required by 41.37(c)(1)(v), is not properly set forth. 37 CFR § 41.37(c)(1)(v) which states:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The independent claim(s) and dependent claims argued separately must be mapped to the disclosure, including specification page and line number, and, if applicable, drawing reference characters. Correction is required. MPEP

§ 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

Accordingly, it is ORDERED that the application is returned to the Examiner to:


- 1) hold the Appeal Brief filed on April 11, 2006, defective;
- 2) notify appellants to file a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);

Application No. 10/623,812

3) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) and;

4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/dal

cc: CERMAK & KENEALY, LLP
515 E. BRADDOCK RD
SUITE B
ALEXANDRIA, VA 22314